

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-06-IH-2307
)	
Communications Options, Inc.)	NAL/Acct. No. 200732080031
)	
Apparent Liability for Forfeiture)	FRN 0003735230
)	

ORDER OF FORFEITURE

Adopted: March 13, 2008

Released: March 13, 2008

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Order of Forfeiture* (“*Order*”), we assess a monetary forfeiture of \$65,000 against Communications Options, Inc. (“COI”). We find that COI willfully and repeatedly violated section 54.711(a) of the Federal Communications Commission’s (the “Commission” or “FCC”) rules¹ by failing to maintain records and documentation to justify information reported in its Telecommunications Reporting Worksheets (“Worksheets”) and provide the records and documentation to the Commission upon request. Further, we find that COI willfully and repeatedly violated a Commission order issued pursuant to sections 4(i), 4(j), 218 and 403 of the Communications Act of 1934, as amended (the “Act”),² by failing to respond on a timely basis to a directive of the Enforcement Bureau (“Bureau”) to provide certain information and documents, and support its response with an affidavit or declaration.

II. BACKGROUND

2. The facts and circumstances of this case are set forth in the *Notice of Apparent Liability for Forfeiture and Order* (“*NAL*”) previously issued by the Commission,³ and need not be repeated at length here. COI is a telecommunications carrier that began providing telecommunications service in the United States in November, 1990.⁴ The Universal Service Administrative Company (“USAC”), the administrator of the universal service fund (“USF”), received information in March 2005 alleging that COI was not reporting revenues collected from Presubscribed Interexchange Carrier Charges (“PICC”) or

¹ 47 C.F.R. § 54.711(a).

² 47 U.S.C. §§ 154(i), 154(j), 218, 403. The Telecommunications Act of 1996 amended the Communications Act of 1934, *see* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

³ *See Communications Options, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13680 (Enf. Bur. 2007) (“*COI NAL*” or “*NAL*”).

⁴ *See* Letter from P.J. Moody, Controller, Communication Options, Inc. to David Janas, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Response 4 (Aug. 30, 2006) (“*LOI Response*”).

End User Common Line (“EUCL”) charges.⁵ Pursuant to a referral from USAC,⁶ on July 13, 2006, the Bureau issued a letter of inquiry (“LOI”) to COI.⁷ The LOI directed COI to, among other things, submit a sworn, written response to a series of questions relating to COI’s compliance with its filing and payment obligations involving regulatory fees, the USF, the Telecommunications Relay Services (“TRS”) Fund, and the North American Numbering Plan Administration (“NANPA”) Fund. COI’s response was due on August 2, 2006. COI failed to respond by that date, and when Bureau staff contacted COI to inquire about the status of COI’s response, COI stated that it “overlooked” the deadline and requested an extension until August 31, 2006.⁸ On August 28, 2006, the Bureau informed COI that failure to respond fully and timely to a Bureau letter of inquiry constitutes a violation of the Act and Commission rules.⁹ COI submitted a response to the LOI on August 31, 2006.¹⁰ Contrary to the Bureau’s directive,¹¹ COI’s LOI Response was not supported with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of COI with personal knowledge of the representations provided in COI’s response, verifying the truth and accuracy of the information submitted and to the production of all requested information and documents in COI’s possession, custody, control or knowledge.

3. On July 27, 2007, the Bureau issued the *NAL* in the amount of \$65,000 against COI for apparently failing to maintain records and documentation to justify information reported in COI’s Worksheets and provide the records and documentation to the Commission upon request; and to respond on a timely basis to a directive of the Bureau to provide certain information and documents, and support its response with an appropriate affidavit or declaration.¹² The *NAL* ordered COI, within 30 days, *i.e.*, by August 27, 2007, to pay the proposed forfeiture or respond to the *NAL*, submitting evidence and arguments in response to the *NAL* to show that no forfeiture should be imposed or that some lesser amount should be assessed.¹³ To date, COI has not paid the forfeiture amount or submitted a formal response to the *NAL*.

⁵ Letter from Wayne M. Scott, Vice President, Internal Audit Division, Universal Service Administrative Company to Hillary DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at 1 (Nov. 15, 2005) (“USAC Referral”). If an interstate telecommunications provider fails to report PICC and EUCL revenue on its Worksheet, the provider may significantly underreport interstate telecommunications revenue, thereby preventing USAC from invoicing a full assessment of the provider’s fair share of universal service contributions.

⁶ See USAC Referral, *supra* note 5.

⁷ Letter of Inquiry from Trent Harkrader, Acting Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to Stephen K. Vogelmeier, President, Communication Options, Inc. (July 13, 2006) (“LOI”).

⁸ Telephone conversation between P.J. Moody, Controller, Communication Options, Inc. and David Janas, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated August 23, 2006.

⁹ Letter from Trent Harkrader, Acting Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to P.J. Moody, Controller, Communication Options, Inc. (Aug. 28, 2006).

¹⁰ See LOI Response, *supra* note 4.

¹¹ LOI at 9 (directing COI to comply with 47 C.F.R. § 1.16).

¹² COI *NAL*, *supra* note 3.

¹³ *Id.* at ¶ 24.

III. DISCUSSION

4. We find by a preponderance of the evidence that COI has willfully and repeatedly failed to maintain records and documentation to justify information reported in COI's Worksheets and provide the records and documentation to the Commission upon request; and to respond on a timely basis to a directive of the Bureau to provide certain information and documents, and support its response with the required affidavit or declaration.

5. Under section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁴ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁵ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,¹⁶ and the Commission has so interpreted the term in the section 503(b) context.¹⁷ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁸ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.¹⁹ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.²⁰ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission order or rule.²¹

6. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,325,000 for a single act or failure to act.²² In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²³

7. We find by a preponderance of the evidence that COI has willfully and repeatedly failed to maintain records and documentation to justify information reported in COI's Worksheets and provide

¹⁴ 47 U.S.C. § 503(b)(1)(B).

¹⁵ 47 U.S.C. § 312(f)(1).

¹⁶ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁷ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, ¶ 5 (1991) ("*Southern California Broadcasting Co.*").

¹⁸ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage) ("*Callais Cablevision, Inc.*").

¹⁹ *Id.* at 1362, ¶ 9; *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5.

²⁰ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²¹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

²² 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

²³ 47 U.S.C. § 503(b)(2)(E).

the records and documentation to the Commission upon request. The Commission's *Forfeiture Policy Statement* and implementing rules prescribe a base forfeiture of \$1,000 for failure to maintain required records.²⁴ We find, however, that failing to maintain records and documentation supporting the Telecommunications Reporting Worksheets warrants a substantial increase to the base forfeiture amount in light of the important public policy aspects of the underlying rule. As the Commission has observed in another USF enforcement action,²⁵ "the size and scope of the universal service and [other federal regulatory] programs impose a monumental burden on the Commission [and] USAC . . . to verify that each and every carrier has complied with the revenue reporting requirements. By necessity, the Commission and the other entities must rely on carriers' compliance with our rules."²⁶ To assist the Commission and USAC in this endeavor, the document retention rule was adopted to ensure the accuracy of a Worksheet could be established, particularly in a case where information suggests the USF contributor is not fully reporting revenue.²⁷ Thus, we find the failure to maintain documents supporting a Worksheet as directed by the Commission analogous to the filing of inaccurate information in that the provider prevents accurate administration of the program and enforcement of Commission rules. The Commission has previously concluded a \$50,000 forfeiture is appropriate for the filing of an inaccurate Worksheet.²⁸ We conclude that the same amount also is appropriate for the failure to maintain supporting documents and provide them to the Commission. Taking into account all of the factors enumerated in section 503(b)(2)(D) of the Act, we assess a forfeiture of \$50,000 against COI for failing to maintain records and documentation supporting COI's Worksheets.

8. We also find by a preponderance of the evidence that COI has willfully and repeatedly failed to respond on a timely basis to a directive of the Bureau to provide certain information and documents, and support its response with the required affidavit or declaration. Section 1.80 of the Commission's rules and the Commission's *Forfeiture Policy Statement* establish a base forfeiture amount of \$3,000 for failure to file required forms or information, and \$4,000 for failure to respond to a Commission communication.²⁹ COI's failure to respond to the Bureau's inquiries for approximately one month occurred following COI's promise that its LOI response would be timely submitted.³⁰ However, when Bureau staff contacted COI after the deadline to inquire about a response, COI informed Bureau staff that COI had "overlooked" its obligation to respond. When COI finally did submit a response it lacked the required supporting affidavit or declaration required by the Commission.³¹

²⁴ See *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, Report and Order, 12 FCC Rcd 17087, 17114, Appendix A (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

²⁵ See *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710 (2006) ("*Globcom Forfeiture Order*"); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893 (2003) ("*Globcom NAL*").

²⁶ *Globcom NAL*, 18 FCC Rcd at 19904, ¶ 30.

²⁷ See *Matter of Federal-State Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 25791, ¶ 34 (2002).

²⁸ *Globcom Forfeiture Order*, 21 FCC Rcd at 4721-24, ¶¶ 29-38; *Globcom NAL*, 18 FCC Rcd at 19904-05, ¶¶ 30-32.

²⁹ 47 C.F.R. § 1.80; *Forfeiture Policy Statement*, 12 FCC Rcd at 17114.

³⁰ See Electronic Mail Message from P.J. Moody, Controller, Communication Options, Inc., to Eric Bash, Assistant Division Chief, and David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (July 19, 2006, 12:35 p.m.) ("July 19, 2006 COI E-Mail").

³¹ See *LOI* at 9 (directing COI to comply with 47 C.F.R. § 1.16).

9. We find that the substantial delay in responding to the *LOI*, and the failure to fully comply with the Bureau's directives, in the circumstances presented here, warrants a substantial increase to the base amount. Misconduct of this type exhibits a blatant disregard for the Commission's authority that cannot be tolerated, and, more importantly, threatens to compromise the Commission's ability to adequately investigate violations of its rules. In this case, the misconduct inhibits our ability to adequately detect and deter potential rule violations in areas of critical importance to the Commission, *i.e.*, the reporting and contribution requirements for the Commission's regulatory programs. Prompt, sworn responses to Bureau inquiry letters are critical to the Commission's enforcement function. We therefore impose a forfeiture against COI of \$15,000 for failing to provide a sworn response to the *LOI* on a timely basis. This forfeiture amount is consistent with recent precedent in similar investigations involving the failures of companies to respond to Bureau inquiries concerning compliance with the reporting and contribution requirements for the Commission's regulatory programs, despite evidence that the *LOIs* had been received.³² COI and other carriers are warned that they may not delay or resist the Bureau's direction to provide information in response to an *LOI*. Such conduct obstructs the enforcement process and will not be tolerated.

10. In conclusion, we find that a total forfeiture in the amount of \$65,000 is warranted. The total forfeiture amount includes: (1) a penalty of \$50,000 for failing to maintain records and documentation to justify information reported in COI's Worksheets and provide the records and documentation to the Commission upon request; and (2) a penalty of \$15,000 for failing to respond on a timely basis to a directive of the Bureau to provide certain information and documents, and support its response with the required affidavit or declaration. We again caution that additional violations of the Act or the Commission's rules could subject COI to further enforcement action. Such action could take the form of higher monetary forfeitures and/or possible revocation of COI's operating authority, including disqualification of COI's principals from the provision of any interstate common carrier services without the prior consent of the Commission.³³

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended,³⁴ and sections 0.111, 0.311, and 1.80 of the Commission's rules,³⁵ that Communications Options, Inc. SHALL FORFEIT to the United States government the sum of

³² See *International Telecom Exchange, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 6232, 6240, ¶ 26 (Enf. Bur. 2006) (proposing \$28,062 forfeiture for apparent failure to respond on a timely basis to a directive of the Enforcement Bureau to provide certain information and documents, and for apparent failure to contribute to the Telecommunications Relay Service Fund); *BigZoo.com Corp.*, Order of Forfeiture, 20 FCC Rcd 3954, 3956, ¶ 7 (Enf. Bur. 2005) (imposing \$20,000 forfeiture for failure to respond on a timely basis to a directive of the Enforcement Bureau to provide certain information and documents); *QuickLink Telecom, Inc.*, Order of Forfeiture, 20 FCC Rcd 14464, 14466, ¶ 10 (Enf. Bur. 2005) (same). See also *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7599, ¶ 29 (2000) (imposing a \$100,000 forfeiture for failure to provide a sworn statement attesting to the truth and accuracy of the company's *LOI* response). We note that in the *SBC* case, a major factor behind the \$100,000 forfeiture amount was the company's ability to pay. See *SBC Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 19370, 19373, ¶ 11 (Enf. Bur. 2001) (subsequent history omitted). We do not consider that factor here.

³³ See *Business Options, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 18 FCC Rcd 6881, 6894, ¶ 36 (2003) (subsequent history omitted); *NOS Communications, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 18 FCC Rcd 6952, 6965, ¶ 27 (2003) (subsequent history omitted).

³⁴ 47 U.S.C. § 503(b).

³⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80.

\$65,000 for willfully and repeatedly violating the Commission's rules and a Commission order issued pursuant to the Act.

12. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.³⁶

13. IT IS FURTHER ORDERED that a copy of this *Order* will be sent by certified mail/return receipt requested to Lewis H. Goldman, Esq., 45 Dudley Court, Bethesda, Maryland 20814.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Enforcement Bureau

³⁶ See 47 C.F.R. § 1.1914.